

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. CR 05-469 JB

EDUARDO HERNANDEZ-MEJIA,

Defendant.

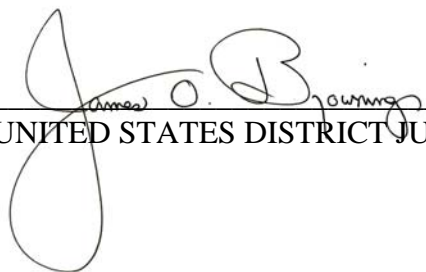
MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on the Defendant's Oral Pro Se motion, made on April 8, 2008, for the Court to reconsider, in light of United States v. Zedner, 547 U.S. 489 (2006), Defendant's Pro-Se Motion to Dismiss Indictment Based on a Violation of the Speedy Trial Act, filed February 12, 2008 (Doc. 394-2)("Defendant's Motion"). See Transcript of Hearing at 2:6-9 (taken April 8, 2008)(Hernandez-Mejia)("Tr.").¹ The Court issued a Memorandum Opinion and Order on April 8, 2008 denying Hernandez-Mejia's Pro Se Motion to Dismiss Indictment Based on a Violation of the Speedy Trial Act. See Memorandum Opinion and Order, filed April 8, 2008 (Doc. 436). As part of Hernandez-Mejia's oral motion, he presented the Court with a tabbed and highlighted copy of United States v. Zedner, 547 U.S. 489 (2006)(Doc. 451). See Tr. at 2:18-3:7 (Hernandez-Mejia & Court). From the tabbed and highlighted portions of the case provided to the Court, the Court understands Hernandez-Mejia to be emphasizing the following legal principle: The Speedy Trial Act requires that when a district court "grants an ends-of-justice continuance, it must 'set forth, in the record of the case, either orally or in writing, its reasons' for finding that the ends

¹ The Court's citations to the transcript of the hearing refer to the Court Reporter's original, unedited versions. Any final transcript may contain slightly different page and/or line numbers.

of justice are served and they outweigh other interests.” United States v. Zedner, 547 U.S. at 506 (quoting 18 U.S.C. § 3161(h)(8)(A)). While the Court is in agreement with the legal principles set forth in United States v. Zedner and the cases Hernandez-Mejia cites in his Motion, Hernandez-Mejia does not specifically argue that the Court failed to make adequate on-the-record findings to support its exclusion of any particular period or periods of time, as the Defendant did in United States v. Williams, 511 F.3d 1044, 1056-59 (10th Cir. 2007). As the Court stated in its previous opinion, Hernandez-Mejia has the burden to support his motion. See 18 U.S.C. § 3162(a)(2)(stating that, “[i]f a defendant is not brought to trial within the time limit required by section 3161(c) as extended by section 3161(h), the information or indictment shall be dismissed on motion of the defendant. The defendant shall have the burden of proof of supporting such motion.”)(emphasis added). This case is a complicated case in which the Court has granted numerous motions to continue. Hernandez-Mejia fails to argue that any particular order to continue was insufficient, or that any particular period or periods of time were improperly excluded. Accordingly, Hernandez-Mejia did not carry the burden to support his motion. Furthermore, the Court notes that it has considered, as well as cited, United States v. Zedner in its April 8, 2008 Memorandum Opinion and Order, at 11. Because Hernandez-Mejia has not carried the burden of supporting his motion, the Court will deny Hernandez-Mejia’s Oral Pro Se Motion to reconsider.

IT IS ORDERED that the Defendant’s Oral Pro Se Motion for the Court to Reconsider His Pro Se Motion to Dismiss Indictment Based on a Violation of the Speedy Trial Act is denied.



UNITED STATES DISTRICT JUDGE

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